

and other institutions of higher education, council of governments (incorporated or not), regional or interstate government entities, or any agency or instrumentality of the preceding entities (including any local educational agency or institution of higher education), and including legislative and judicial departments. The term does not include contractors of, or grantees of, State or local governments.

(1) *Local educational agency* has the meaning given that term in section 8013 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7713).

(2) *Institution of higher education* has the meaning given that term in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a)).

(3) *Tribal government* means—

(i) The governing body of any Indian tribe, band, nation, or other organized group or community located in the continental United States (excluding the State of Alaska) that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians; and

(ii) Any Alaska Native regional or village corporation established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*).

[68 FR 24378, May 7, 2003, as amended at 73 FR 54338, Sept. 19, 2008]

538.7002 General.

(a) 40 U.S.C. 501, (the Act) authorizes the Administrator of General Services to procure and supply personal property and nonpersonal services for the use of Executive agencies. Under 40 U.S.C. 502, the goods and services available to executive agencies are also available to mixed ownership Government corporations, establishments within the legislative or judicial branches of Government (excepting the Senate, House of Representatives, Architect of the Capitol, and any activities under the direction of the Architect of the Capitol), the District of Columbia, and Qualified Non-profit Agencies.

(b) Section 211 of the E-Government Act of 2002 amends 40 U.S.C. 502 to authorize the Administrator of General Services to provide for use of certain Federal supply schedules of the GSA by

a State or local government, which includes any State, local, regional, or tribal government, or any instrumentality thereof (including any local educational agency or institution of higher education).

(c) Pub.L. 110-248, The Local Preparedness Acquisition Act, authorizes the Administrator of General Services to provide for the use by state or local governments of Federal Supply Schedules of the General Services Administration (GSA) for alarm and signal systems, facility management systems, firefighting and rescue equipment, law enforcement and security equipment, marine craft and related equipment, special purpose clothing, and related services (as contained in Schedule 84).

(d) State and local governments are authorized to procure from Schedule 70 contracts, Consolidated Schedule contracts containing information technology SINS, and Schedule 84 contracts. A listing of the participating contractors and SINS for the products and services that are available through Schedule 70 contracts, the Consolidated Schedule contracts containing information technology SINS, and Schedule 84 contracts, is available in GSA's Schedules e-Library at www.gsa.gov/elibrary. Click on Schedules e-Library, and under Cooperative Purchasing, click on "View authorized vendors." The contractors and the products and services available for Cooperative Purchasing will be labeled with the Cooperative Purchasing icon.

[68 FR 24378, May 7, 2003, as amended at 73 FR 54338, Sept. 19, 2008]

538.7003 Policy.

Preparing solicitations when schedules are open to eligible non-federal entities. When opening Schedule 70, the Consolidated Schedule containing information technology SINS, and Schedule 84, for use by eligible non-federal entities, the contracting officer must make minor modifications to certain Federal Acquisition Regulation and GSAM provisions and clauses in order to make clear distinctions between the rights and responsibilities of the U.S. Government in its management and regulatory capacity pursuant to which it awards schedule contracts and fulfills associated Federal requirements versus

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the rights and responsibilities of eligible ordering activities placing orders to fulfill agency needs. Accordingly, the contracting officer is authorized to modify the following FAR provisions/clauses to delete “Government” or similar language referring to the U.S. Government and substitute “ordering activity” or similar language when preparing solicitations and contracts to be awarded under Schedule 70, and the Consolidated Schedule containing information technology SINS, and Schedule 84. When such changes are made, the word “(DEVIATION)” shall be added at the end of the title of the provision or clause. These clauses include but are not limited to:

- (a) 52.212-4, Contract Terms and Conditions—Commercial Items.
- (b) 52.216-18, Ordering.
- (c) 52.216-19, Order Limitations.
- (d) 52.229-1, State and Local Taxes.
- (e) 52.229-3, Federal, State, and Local Taxes.
- (f) 52.232-7, Payments Under Time-and-Materials and Labor-Hour Contracts.
- (g) 52.232-17, Interest.
- (h) 52.232-19, Availability of Funds for the Next Fiscal Year.
- (i) 52.232-34, Payment by Electronic Funds Transfer—Other than Central Contractor Registration
- (j) 52.232-36, Payment by Third Party.
- (k) 52.237-3, Continuity of Services.
- (l) 52.246-4, Inspection of Services—Fixed Price.
- (m) 52.246-6, Inspection-Time-and-Material and Labor-Hour.
- (n) 52.247-34, F.O.B. Destination.
- (o) 52.247-38, F.O.B. Inland Carrier Point of Exportation.

[68 FR 24378, May 7, 2003, as amended at 73 FR 54338, Sept. 19, 2008]

538.7004 Solicitation provisions and contract clauses.

- (a) The contracting officer shall insert the clause at 552.238-77, Definition (Federal Supply Schedules), in solicitations and contracts for—
 - (1) Schedule 70;
 - (2) The Consolidated Schedule containing information technology SINS; and
 - (3) Schedule 84.
- (b) The contracting officer shall insert the clause at 552.238-78, Scope of

Contract (Eligible Ordering Activities), in solicitations and contracts for—

- (1) Schedule 70; and
- (2) The Consolidated Schedule containing information technology SINS; and
- (3) Schedule 84.
- (c) The contracting officer shall insert the clause at 552.238-79, Use of Federal Supply Schedule Contracts by Certain Entities—Cooperative Purchasing, in solicitations and contracts for—
 - (1) Schedule 70;
 - (2) The Consolidated Schedule containing information technology SINS; and
 - (3) Schedule 84.
- (d) See 552.101-70 for authorized FAR deviations.

[73 FR 54339, Sept. 19, 2008]

Subpart 538.71—Recovery Purchasing

SOURCE: 72 FR 4653, Feb. 1, 2007, unless otherwise noted.

538.7100 Scope of subpart.

This subpart prescribes policies and procedures to implement the John Warner National Defense Authorization Act for Fiscal Year 2007 (Pub. L. 109-364) authorizing non-federal organizations to use Federal Supply Schedule contracts to purchase products and services to be used for recovery from major disasters, terrorism or nuclear, biological, chemical, or radiological attack.

538.7101 Definitions.

The definitions in subsection 538.7001 shall apply for purposes of this subpart.

538.7102 General.

- (a) Section 833 of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Pub. L. 109-364) amends 40 U.S.C. 502 to authorize the Administrator of General Services to provide to State and local governments the use of Federal Supply Schedules of the GSA for purchase of products and services to be used to facilitate recovery from a major disaster declared by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*) or to